APPEAL NO. 93340

On April 2, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing officer determined that the claimant, Ms. D, who is the appellant, had not sustained a repetitive trauma injury on (date of injury), in the course and scope of her employment with Texas Instruments, but that pain and carpal tunnel syndrome experienced in her right hand in 1991 was sustained in March and April of 1990.

The claimant has appealed, arguing that the hearing officer has misinterpreted certain records upon which he apparently based his conclusions, and arguing that there was no definite diagnosis of right handed carpal tunnel syndrome prior to (date) The carrier argues evidence that it contends supports the determination of the hearing officer, in that the claimant knew, or should have known, that her carpal tunnel syndrome was related to her employment in 1990.

DECISION

After reviewing the record, we affirm the determination of the hearing officer.

Claimant stated that she worked for Texas Instruments as an electronics assembler, which involved the repetitive use of her hands. Claimant contended that she developed and was diagnosed with carpal tunnel syndrome of her left hand in April 1990, for which she filed a workers' compensation claim. Although she indicated that her right hand also tingled and was numb in 1990, she asserted that it was not until April or May 1991 that she was told that she might have carpal tunnel syndrome of the right hand. She said that prior to that, her treating doctor told her only that her hand was tired, and just ran tests on her right hand. Claimant entered into a compromise settlement agreement under the previous workers' compensation law ("old law") after a prehearing conference on May 21, 1991. The claimant stated that she had been at work for about a month by the time of this conference, and her right hand had been tingling and numb since she went back to work. She acknowledged that both hands were discussed at the prehearing conference, but claimed that only her left hand condition was resolved by the agreement. In addition to two surgeries on her left hand, claimant had surgery on her right hand in September 1991.[1]

Medical records were offered by the carrier and admitted into evidence with no objection from the claimant. In March 1990, notes from an employee medical treatment record indicate that claimant was being treated for carpal tunnel in both wrists, with the right being less severe. An EMG/NCV study completed May 31, 1990, notes that claimant presented with left hand pain and numbness, and had "recently" begun to experience intermittent right-handed numbness. At that time, only mild left carpal tunnel was

[1] The hearing officer's reference in his discussion to right handed carpal tunnel syndrome being "clearly diagnosed" in "September 1991" may be a typographical error, as the hearing officer in the preceding Statement of the Evidence noted the written diagnosis of mild right carpal tunnel syndrome dated September 28, 1990. Claimant's own position was that her right hand was diagnosed prior to her actual surgery.

diagnosed. Claimant had surgery on her left hand in July 1990, and by September 18, 1990, a diagnosis of mild right carpal tunnel syndrome was recorded by Dr. M, her treating physician. On November 5, 1990, the claimant filed a claim for workers' compensation with the Texas Workers' Compensation Commission (TWCC) which stated "[d]uring the course and scope of my job as an electronic assembly worker I developed carpal tunnel syndrome problems in both hands as a result of continuous traumatic exposure to this type of job . . . ." On cross-examination, claimant's explanation for this was that she only filed such a claim on advice of her attorney. On subsequent redirect examination, claimant acknowledged that she suspected in November 1990 when she filed the claim that she might have carpal tunnel syndrome of both hands.

Carrier's adjuster (Ms. Mc) stated that the compromise settlement agreement entered into as a result of the prehearing conference for the old law claim covered carpal tunnel syndrome for both hands. Ms. Mc stated that the carrier had disputed the old law claim because of information it received that the carpal tunnel syndrome had been caused by thyroid medication, rather than claimant's job.

The hearing officer is the sole judge of the relevance and materiality, the weight and credibility, of the evidence offered in a contested case hearing. Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-6.34(e) (Vernon Supp. 1993) (1989 Act). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The burden is on the claimant to prove that an injury occurred within the course and scope of employment. Texas Employers' Insurance Co. v. Page, 553 S.W.2d 98 (Tex. 1977). A trier of fact is not required to accept a claimant's testimony at face value, even if not specifically contradicted by other evidence. Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.- Amarillo 1980, no writ).

The hearing officer did not highlight the definition of occupational disease that is pertinent to the 1989 Act, so we will do so here. Article 8308-4.14 states that the date of injury for an occupational disease is the "date on which the employee knew or should have known that the disease may be related to the employment." This definition does not require rendition of an unequivocal medical diagnosis to trigger the requisite knowledge. Thus, the claimant's case failed not only, as the hearing officer notes, because she did not prove that she sustained a new injury on (date of injury), but because there is essentially no evidence in the record to support that this was the first date that claimant knew, or should have known, that she had right carpal tunnel syndrome. The evidence in the record indicates earlier

dates claimant knew, or should have known, that she had carpal tunnel syndrome in her right hand, such as September 28, 1990, (the date a written diagnosis was rendered), or November 5, 1990, (the date that claimant filed a claim for compensation with the commission affirming that she had developed carpal tunnel syndrome in both hands), if not earlier. By acknowledging in redirect examination that she suspected that she might have carpal tunnel syndrome in both hands, claimant's testimony would seem to rest squarely within the "should have known" definition of date of injury for occupational disease as set forth in Article 8308-4.14.

There is sufficient evidence to support the hearing officer's decision that no compensable injury occurred, and it is affirmed.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Philip F. O'Neill
Appeals Judge

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Gary L. Kilgore
Appeals Judge